

**IN THE UNITED STATES BANKRUPTCY COURT
FOR DISTRICT OF DELAWARE**

IN RE:	(
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PHP Healthcare Corporation	(Bankruptcy No. 98-2608
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Debtor(s)	(Chapter 11
	(
PHP Liquidating LLC	(
	(
Movant(s)	(
	(
v.	(
	(
PricewaterhouseCoopers, LLP	(
Respondent(s)	(
	(
	(

Appearances:

Thomas LaConte, Esquire, and Victoria Counihan,
Esquire, for PHP Liquidating LLC

Christopher Lhulier, Esquire, and James Ricciardi,
Esquire, for PricewaterhouseCoopers, LLP

Phillip Nemecek, Esquire, for North American
Administrators, Inc., and North American Health Plans, Inc.

MEMORANDUM OPINION¹

The matter before the court is the Motion of the PHP Liquidating Trustee for an Order Pursuant to Bankruptcy Rule 2004 Compelling Document Production by PricewaterhouseCoopers, LLP. The plan of reorganization, confirmed on October 12, 1999, established the PHP Liquidating LLC ("LLC") to liquidate

¹The court's subject matter jurisdiction was at issue. During oral argument, for the reasons expressed on the record on January 29, 2001, I ruled that this court does have jurisdiction. This Memorandum Opinion constitutes our findings of fact and conclusions of law as to the merits of the Rule 2004 motion.

Debtor's assets for the benefit of Debtor's creditors. Under the plan, LLC was assigned Debtor's causes of action, one of which is in arbitration and involves allegations that North American Administrators, Inc. and North American Health Plans, Inc. ("North American") as third party administrator, mishandled the administration of claims submitted by Debtor and Debtor's affiliates. The plan also assigned to LLC Debtor's books and records, and its "claims and rights" therein, including those books and records in the possession of third parties.

Prior to plan confirmation, Debtor hired Pricewaterhouse-Coopers ("PWC") to perform an audit to determine whether North American performed its duties. The audit yielded a report dated 1998, entitled "PHP Healthcare Corporation, Onsite Assessment of North American Health Plan, August 10-14, 1998". LLC's financial advisor, Arthur Andersen, wants to conduct its own analysis and audit of North American's administration of claims in preparation for the arbitration proceeding. To that end, Arthur Andersen wants to review PWC's work papers and other documents used by PWC in preparing the 1998 Report.

State law defines the property interests in question. Butner v. U.S., 440 U.S. 48, 55 (1979) ("Property interests are created and defined by state law"). Delaware law provides at title 24, section 120 ("Ownership of working papers"), as follows (in pertinent part):

(a) All statements, records, schedules,

working papers and memoranda made by a permit holder* or a partner, share-

**permit to practice accountancy
or certified public accountancy
is required, § 102(8)*

holder, officer, director or employee of a permit holder, incident to or in the course of rendering services to a client, except the reports submitted by the permit holder to the client, and except for records that are part of the client's records, shall be and remain the property of the permit holder in the absence of an express agreement between the permit holder and the client to the contrary.....

(b) A permit holder shall furnish to his or her client or former client ... (I) A copy of the permit holder's working papers, to the extent that such working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client....

This section expressly provides that work papers² belong to the professional absent an agreement to the contrary. No one has provided this court with evidence of an agreement to the contrary and LLC has not cited any authority that would compel PWC to enter into such an agreement before or after the fact. There is also no allegation that the "other documents" sought by LLC included records that would "ordinarily constitute" records of the Debtor and therefore be available to LLC as its assignee. However, if any of Debtor's documents or records (not including PWC's work papers) are in PWC's

²LLC alleges that PWC showed the work papers to Arthur Andersen in connection with another matter. That fact, however, does not change ownership of the papers.

possession, custody or control, they remain property of Debtor and shall be produced to LLC's representative.

LLC argues that assignment of Debtor's causes of action and books and records entitles it to PWC's work papers and other documents. In addition, LLC asserts that the work papers and other documents are Debtor's assets because Debtor was PWC's client. Therefore, as Debtor's assignee, LLC contends that it is entitled to the work papers and documents. Any documents that were not property of the Debtor before the assignments under the plan of reorganization do not become property of the LLC by virtue of the assignment.

In addition, LLC cites no authority for the proposition that a client is entitled to its professional's work papers. LLC is entitled to no more than Debtor would be and Debtor would be entitled only to reports submitted to it and records that belonged to it in the first place. The fact that the papers and documents at issue concern work that was done for the Debtor is not determinative of ownership. This is precisely the type of argument for which §120 provides protection to the professional for work papers and to the client for the source records and documents.

LLC also asserts that access to the work papers and documents will "substantially reduce" Arthur Andersen's time to perform its audit and that because PWC previously provided

access it should be required to turn them over now.³ PWC concedes that it previously gave Arthur Andersen access to its work papers for some other purpose. However, its cooperation earlier does not impose an obligation on PWC to turn those papers over to LLC or its professional, Arthur Andersen, now, nor does it obligate PWC to execute an agreement under §120(b). Section 120 does not entitle LLC to work papers belonging to the professional simply because they would be germane to administration of the estate or save another professional time or effort. The work papers are available only if (a) there is an express agreement entitling Debtor/LLC to them or (b) those papers include records that would ordinarily be Debtor's/LLC's and are not otherwise available to Debtor/LLC. LLC has set forth no facts upon which I can find that the work papers meet either standard. As stated earlier regarding other documents or records, to the extent that any source records or documents are in PWC's possession, custody, or control, §120 suggests that they be released to Debtor/LLC, and PWC will be so ordered.

An appropriate order will be entered.

DATE: February 23, 2001

/S/

Judith K. Fitzgerald
United States Bankruptcy Judge

³PWC objects to the turnover request, arguing that it was first raised during oral argument and that no adversary action was brought. Inasmuch as I find the work papers to be property of PWC and not of Debtor or the estate, no turnover action will lie as to the work papers. I am not aware that there is a dispute as to any documents other than the work papers.

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ORDER

AND NOW, this 23rd day of February, 2001, for the reasons expressed in the foregoing Memorandum Opinion, it is **ORDERED, ADJUDGED, and DECREED** that the Motion of PHP Liquidating LLC for an Order Pursuant to Bankruptcy Rule 2004 Compelling Document Production is **DENIED** with regard to PricewaterhouseCoopers' work papers and **GRANTED** as to any of Debtor's/LLC's records and/or documents in the possession, custody or control of PricewaterhouseCoopers. Production of Debtor's/LLC's records and/or documents shall be made within 20 days hereof. If there is any dispute as to records or documents other than the work papers, either party may seek relief from this court, after conferring to attempt to resolve

the dispute, by filing an appropriate pleading within 30 days hereof.

/S/

Judith K. Fitzgerald
United States Bankruptcy Judge

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